



[Billing Code 3290-F8]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0001]

Procedures to Consider Additional Requests for Exclusion of Particular Products

From the Solar Products Safeguard Measure

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: On January 23, 2018, the President imposed a safeguard measure on imports of crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products such as modules (other CSPV products), consisting of (1) a tariff-rate quota on imports of CSPV cells not partially or fully assembled into other products, with an unchanged rate of duty for the within-quota quantity and an increase in the rate of duty applicable to articles entered in excess of that quantity; and (2) an increase in the rate of duty on imports of other CSPV products, as provided for in the Proclamation's annex. This notice establishes the procedures to request the exclusion of a particular product from the safeguard measure, the criteria for describing a particular product for which exclusion is sought, and identifies the factors that the Office of the United States Trade Representative (USTR) may take into consideration when determining whether to exclude a particular product. It also solicits requests for exclusion of a particular product from the safeguard measure.

DATES:

[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION], at 11:59 pm EST:

Deadline for the submission of requests for exclusion of a particular product from the safeguard measure.

[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION] at 11:59 pm EST:

Deadline for the submission of comments in response to requests for exclusion of a particular product from the safeguard measure.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. The docket number is USTR–2018–0001. For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395-9666. All non-confidential versions of submissions will be posted in the docket for public inspection.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at vmroczka@ustr.eop.gov or (202) 395-9450, or Dax Terrill, Office of General Counsel, at Dax.Terrill@ustr.eop.gov or (202) 395-4739.

SUPPLEMENTARY INFORMATION:**I. Background.**

Following receipt of a petition from Suniva, Inc., a producer of CSPV products in the United States, that was later joined by SolarWorld Americas, Inc., another producer of CPSV products in the United States (collectively, petitioners), the ITC instituted an investigation under section 202 of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2252), to determine whether there were increased imports of CSPV products in such quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing like or directly competitive products. The ITC notice of institution (82 FR 25331) identified the scope of the products covered by this investigation as CSPV cells, whether or not partially or fully assembled into other products, of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof) formed by any means, whether or not the cell has undergone other processing, including, but not limited to cleaning, etching, coating, and addition of materials (including, but not limited to metallization and conductor patterns) to collect and forward the electricity that is generated by the cell. The scope of the investigation also included photovoltaic cells that contain crystalline silicon in addition to other materials, such as passivated emitter rear contact cells, heterojunction with intrinsic thin layer cells, and other so-called “hybrid” cells.

The notice of institution identified products covered and excluded by the scope of the investigation. Specifically, the scope of the investigation did not cover:

- Thin film photovoltaic products produced from amorphous silicon ("a-Si"), cadmium telluride ("CdTe"), or copper indium gallium selenide ("CIGS");

- CSPV cells, not exceeding 10,000 mm² in surface area, that are permanently integrated into a consumer good whose primary function is other than power generation and that consumes the electricity generated by the integrated CSPV cell.

Where more than one CSPV cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all CSPV cells that are integrated into the consumer good; and

- CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.

On the basis of information developed during the investigation, the ITC determined pursuant to section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that CSPV products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry and made additional findings under the implementing statutes of certain free trade agreements or other statutory provisions related to certain preferential trade programs.

II. Products Excluded from the Application of the Safeguard Measure.

On October 25, 2017 (82 FR 49469), the Trade Policy Staff Committee (TPSC) provided details concerning the process it would use to make a recommendation to the President on actions he should take to facilitate the efforts of the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. The process included an opportunity to file initial and responsive comments regarding this question and a public hearing on December 6, 2017,

during which commenters testified regarding their submissions and addressed the claims and arguments of others. As part of this process, a number of interested persons requested the exclusion of products from application of the safeguard measure.

Presidential Proclamation 9693 of January 23, 2018 (83 FR 3541) excluded certain particular products:

- 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm² or more but not over 3,061 cm²), provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;
- 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm;
- 2 watt solar panels incorporated into daylight dimmers, that may use rechargeable batteries, such panels with the following dimensions: 75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm;
- Off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics: (a) a total power output of 100 watts or less per panel; (b) a maximum surface area of 8,000 cm² per panel; (c) does not include a built-in inverter; and where the panels have glass covers, such panels must be in individual retail packaging (in this context,

retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport);

- 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm² or less, with one black wire and one red wire (each of type 22 AWG or 24 AWG) not more than 206 mm in length when measured from panel edge, provided that no such panel shall contain an internal battery or external computer peripheral ports;
- 27.1 watt or less solar panels, each with surface area less than 3,000 cm² and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such unit which is an acrylonitrile butadiene styrene ("ABS") box that incorporates a light emitting diode ("LED") by coated wires that include a connector to permit the incorporation of an extension cable.

III. Procedure to Request the Exclusion of Additional Particular Products.

The Proclamation directed the United States Trade Representative to publish a notice establishing procedures for requests for the exclusion of particular products from the safeguard measure. The Proclamation provides that if the Trade Representative determines, after consultation with the Secretaries of Commerce and Energy (the interagency group), that a particular product should be excluded, the Trade Representative can modify the Harmonized Tariff Schedule of the United States (HTS) provisions created in the Proclamation's annex to exclude that particular product from the safeguard measure upon publication of the determination in the Federal Register. The

Proclamation also instructed the Trade Representative to establish procedures for requests for exclusion of a particular product from the safeguard measure.

USTR invites interested persons to submit comments identifying a particular product for exclusion from the safeguard measure and providing reasons why the product should be excluded. USTR will evaluate each request on a case-by-case basis and will grant only those exclusions that do not undermine the objectives of the safeguard measures.

A. Requests for exclusion of particular products.

Any request for exclusion clearly should identify the particular product in terms of the physical characteristics (e.g., dimensions, wattage, material composition, or other distinguishing characteristics) that distinguish it from products that are subject to the safeguard measures. USTR will not consider requests that identify the product at issue in terms of the identity of the producer, importer, or ultimate consumer; the country of origin; or trademarks or tradenames. USTR will not consider requests that identify the product using criteria that cannot be made available to the public.

In evaluating requests for exclusion, the interagency group may consider the following factors or information:

- The names and locations of any producers, in the United States and foreign countries, of the particular product;

- Total U.S. consumption of the particular product, if any, by quantity and value for each year from 2014 to 2017, the projected annual consumption for each year from 2018 to 2022, and any related information about the types of consumers;
- Details concerning the typical use or application of the particular product;
- Total U.S. production of the particular product for each year from 2014 to 2017, if any;
- The identity of any U.S.-produced substitute for the particular product, total U.S. production of the substitute for each year from 2014 to 2017, and the names of any U.S. producers of the substitute;
- Whether the particular product or substitute for the particular product may be obtained from a U.S. producer;
- Whether qualification requirements affect the requestor's ability to use domestic products;
- Whether the particular product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities;
- Inventories of the particular product in the United States;
- Whether excluding the particular product from the safeguard measure would result in a benefit or advantage to the long-term competitiveness of the solar manufacturing supply chain in the United States, including by fostering research and development, supporting manufacturing innovation, or by leading to the development of differentiated products that command higher prices;
- The ability of U.S. Customs and Border Protection to administer the exclusion; and

- Any other information or data that interested persons consider relevant to an evaluation of the request.

As indicated above, the Trade Representative, in consultation with the Secretaries of Commerce and Energy, will grant only those exclusions that do not undermine the objectives of the safeguard measure. Any exclusion will be effective upon publication of the exclusion determination in the Federal Register.

Where necessary, an agency participating in the interagency group may contact interested persons to discuss the procedures or information referenced above or to gain additional information.

USTR strongly discourages the submission of business confidential information. Any request that contains business confidential information must be accompanied by a public version that does not contain the business confidential information, which will be posted on Regulations.gov.

When interested persons identify factors in addition to those listed above that they consider relevant to evaluating whether a particular product should be excluded from the safeguard measure, they should explain how the factor would affect the domestic industry's efforts to make a positive adjustment to import competition or the social and economic benefits or costs associated with the safeguard measure.

B. Comments on requests for exclusions.

After the submission of requests for exclusion of a particular product, interested persons will have an opportunity to comment on the requests, indicate whether they

support or oppose any of them, and provide reasons for their view. You can view requests for exclusions on www.regulations.gov by entering docket number USTR–2018–0001 in the search field on the home page. If an interested person submits a request for exclusion of a particular product and, during the responsive comment period, no objection to that request is received, USTR may conclude there are no reasons to prevent a determination that the particular product should be excluded from the safeguard measure, and may conclude, based on the interagency group’s review of the request, any comments on the requests, and other relevant information, that the product should be excluded.

C. Future requests.

At this time, USTR will not consider requests for exclusion received after [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION]. USTR will monitor developments in the U.S. market for CSPV products and, if warranted, provide for additional requests for exclusion at a later date.

D. Submission instructions.

USTR seeks requests and responses to requests with respect to the issues described in Section III.A through a public comment process. To be assured of consideration, you must submit written comments by 11:59 pm EST on [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION], and any written responses to those comments by 11:59 pm EST on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION]. All comments must be in English and must identify on the reference

line of the first page of the submission “Comments Regarding Requests for Product Exclusions From the Solar Products Safeguard Measure.”

We strongly encourage commenters to make on-line submissions using the www.regulations.gov website. To submit comments via www.regulations.gov, enter docket number USTR-2018-0001 on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled “Comment Now!” For further information on using www.regulations.gov, please consult the resources provided on the website by clicking “How to Use Regulations.gov” on the bottom of the home page. We will not accept hand-delivered submissions.

The www.regulations.gov website allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. We prefer that you provide comments as an attached document in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the “Type Comment” field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

As noted above, we strongly discourage the submission of business confidential information and its inclusion may prevent a full consideration of the product exclusion

request. In any event, including business confidential information in a submission should be extremely circumscribed. Additionally, the filer must provide a public version and the file name of the business confidential version should begin with the characters “BC”.

Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter.

As indicated above, filers of submissions containing business confidential information must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

We emphasize that submitters are strongly encouraged to file comments through www.regulations.gov. You must make arrangements for any alternative method of submission with Yvonne Jamison at (202) 395-9666 in advance of transmitting a comment. You can find general information about USTR at www.ustr.gov.

We will post comments in the docket for public inspection, except business confidential information. You can view comments on www.regulations.gov by entering docket number USTR-2018-0001 in the search field on the home page.

Edward Gresser,
Chair of the Trade Policy Staff Committee,
Office of the United States Trade Representative.

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